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In the Supreme Court of the United States

OCTOBER TERM, 1987

JIMMY L. STANDLEY, ET AL., PETITIONERS

v.

UNITED STATES TAX COURT
(COMMISSIONER OF INTERNAL REVENUE,
REAL PARTY IN INTEREST)

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

CHARLES FRIED
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

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Petitioners contend that the court of appeals erred in refusing to issue a writ of mandamus requiring the United States Tax Court to stay proceedings in cases brought by petitioners for redetermination of their tax liabilities, pending resolution of another lawsuit brought by petitioners in another court seeking damages and injunctive relief.

1. a. The individual petitioners are members of the American Law Association (ALA), an organization created as part of a tax shelter scheme that utilized foreign trusts to attempt to evade federal income taxes. See generally *United States* v. *Dahlstrom*, 713 F.2d 1423, 1425-1426 (9th Cir. 1983), cert. denied, 466 U.S. 980 (1984). The other petitioners are foreign trusts formed by the individual petitioners as part of that scheme. Both the Ninth Circuit and the Tax Court have held that such foreign trusts are ineffective to shift income from the creator to the nontaxable foreign trusts. *Akland* v. *Commissioner*,

767 F.2d 618 (1985); *Zmuda* v. *Commissioner*, 731 F.2d 1417 (1984); *Professional Services* v. *Commissioner*, 79 T.C. 888 (1982).

The Internal Revenue Service (IRS) examined petitioners' income tax returns and determined deficiencies in income tax against each of the petitioners. Each petitioner filed a petition with the United States Tax Court seeking a redetermination of the deficiencies asserted by the IRS. The Tax Court has consolidated all the petitioners' cases for trial, and that trial is now scheduled for November 2, 1987.

b. Petitioners, and others, filed a separate suit in the United States District Court for the District of Colorado seeking damages and injunctive relief against various named and unnamed employees of the IRS and the Department of Justice. That lawsuit was transferred to the District of Arizona, where it is now pending (*Nordbrock* v. *Jensen,* No. CIV-86-687-PHX-CLH). Petitioners alleged in the complaint that the defendants had unlawfully conspired against them to deprive them of various constitutional and statutory rights, including, *inter alia*, their First, Fourth, and Fifth Amendment rights and their right to a jury trial to determine the correct amount of their federal tax liabilities. See C.A. Pet. for Writ of Prohibition and/or Writ of Mandamus (Mandamus Pet.), Exh. H. The latter claim rested on an allegation that the defendants had inflated the amount of the asserted deficiencies in excess of the true tax liabilities, yielding an amount that the petitioners could not pay. Petitioners contended that this alleged conspiracy deprived them of their right to pay the full amount of the deficiencies and to litigate the correctness of the assessment in a refund suit in federal district court or the Claims Court. See Mandamus Pet. at 10, 12.

c. On January 30, 1987, petitioners filed a motion seeking a continuance of the Tax Court trial (then sched-

uled for April 20, 1987) until resolution of their damage suit in the district court. See Mandamus Pet., Exh. A. The Tax Court denied the motion on February 6, 1987. On March 6, 1987, petitioners filed a Petition for Writ of Prohibition and/or Writ of Mandamus with the court of appeals seeking an order directing the Tax Court to stay its trial proceedings. Petitioners asserted that they would suffer irreparable injury if the Tax Court proceedings were not stayed because an unfavorable decision in that court might have an adverse collateral estoppel effect on their pending damage action in the district court. Petitioners argued that this eventuality would deprive them of their right to have a jury determine their right to damages. See Mandamus Pet. at 21-25. The court of appeals denied the petition on March 23, 1987 (Pet. App. 1a).

2. The court of appeals correctly denied the petition for a writ of mandamus or prohibition, and there is no reason for this Court to review that denial. "The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations. * * * [T]he writ 'has traditionally been used in federal courts only "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." ' " *Kerr* v. *United States District Court,* 426 U.S. 394, 402 (1976) (citations omitted); see also *Allied Chemical Corp.* v. *Daiflon, Inc.,* 449 U.S. 33, 34-35 (1980); *Will* v. *United States,* 389 U.S. 90, 95 (1967). Moreover, the party seeking mandamus must demonstrate that his right to the writ is "clear and indisputable." *Kerr,* 426 U.S. at 403; *Bankers Life & Casualty Co.* v. *Holland,* 346 U.S. 379, 384 (1953).

Petitioners plainly fail to satisfy these requirements. They do not—and cannot—maintain that the Tax Court would exceed its jurisdiction in proceeding to trial on the issues raised by petitioners' petitions in that court; nor do they contend that the Tax Court has an absolute duty to

grant petitioners' request for a continuance. On the contrary, the Tax Court's exercise of its discretion to control its own docket is a matter that "ought not to be overridden by a writ of mandamus. Where a matter is committed to the discretion of a * * * [trial] court, it cannot be said that a litigant's right to a particular result is 'clear and indisputable.' " *Will* v. *Calvert Fire Ins. Co.*, 437 U.S. 655, 665-666 (1978) (plurality opinion (footnotes omitted)).

In any event, the reasons urged by petitioners in seeking a writ of mandamus provided little basis for the Tax Court to grant a continuance. The Tax Court's jurisdiction, with certain exceptions not pertinent here, is limited to determining deficiencies or overpayments in tax. See Sections 6214 and 6512(b) of the Internal Revenue Code (26 U.S.C.). Accordingly, the Tax Court's decisions in petitioners' consolidated cases will not resolve the allegations made in petitioners' suit for damages against individual employees of the IRS and the Department of Justice, which is founded on the claim that these individuals conspired to deprive petitioners of various constitutional and statutory rights. See Mandamus Pet., Exh. H.* Thus, the Tax Court acted quite reasonably in denying petitioners' request for a continuance, and there is no reason whatsoever for this Court to review the court of appeals' refusal to issue an extraordinary writ directing the Tax Court to stay the trial.

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* We note that petitioners' claim that being forced to litigate in the Tax Court would deprive them of a "constitutional right to have the facts determined by a jury" (Pet. 12) is misconceived. It has long been established that there is no *constitutional* right to a jury trial in a suit against the United States. See *Galloway* v. *United States*, 319 U.S. 372, 388 (1943); *McElrath* v. *United States*, 102 U.S. 426, 440 (1880). The right to a jury trial to which petitioners allude, *i.e.*, in a tax refund suit brought in federal district court against the United States (see 28 U.S.C. 2402), is a statutory right conferred by Congress in 1954. See Act of July 30, 1954, ch. 648, 68 Stat. 589.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

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